

**Before the State of South Carolina  
Department of Insurance**

In the Matter of:

**Foundation Insurance Company**  
1061 521 Corporate Center,  
Suite 140  
Fort Mill, South Carolina 29715

**Amended Order  
Imposing Administrative Supervision  
And Appointing Supervisor**

The South Carolina Department of Insurance brings this matter before the Deputy Director of Insurance upon review of the business affairs and operations of Foundation Insurance Company (Foundation).

It is the Department's opinion that the operation of Foundation is such as to continue to render the continuation of its business hazardous to the public and its policyholders. The Department further believes Foundation has failed to comply with the insurance laws of this state.

**FINDINGS OF FACT**

1. Foundation was licensed as a South Carolina captive insurance company under Chapter 90 of Title 38 of the South Carolina Code of Laws on February 21, 2001.
2. After applying for conversion to a traditional insurer, Foundation was granted a conditional certificate of authority as a traditional insurer under Section 38-5-10 of the South Carolina Code on August 13, 2004. The Department's August 13, 2004 letter, provided that the Director's approval to issue the Certificate of Authority was contingent upon the successful completion of an organizational examination or other examination in order to determine, among other things, that Foundation had adequate capital and surplus to support its business plan.
3. Foundation's 2003 Annual Statement showed that the Company's surplus was (\$1,435,805). Section 38-9-10 (A) (1) required that Foundation maintain surplus of not less than \$375,000.
4. On March 10, 2004, the Department, by certified mail, informed Foundation that it had until April 9, 2004 to provide the Department with evidence that it had brought its capital and surplus into compliance with Section 38-9-10(A)(1).
5. By letter dated March 25, 2004, Foundation acknowledged receipt of the Department's Directive (the March 10, 2004 letter).

6. Foundation was subjected to financial examination by the Department of Insurance. The examination commenced on March 29, 2004, and concluded on June 11, 2004. The examination, among other things, determined that loss reserves held by Foundation were understated by \$14,968,493 and that total capital and surplus of Foundation was (\$15,533,477).
7. On April 12, 2004, the Director suspended Foundation's Certificate of Authority to transact business in this State.
8. On May 17, 2004, the Director ordered that Foundation be placed under the Department's supervision pursuant to the Administrative Supervision of Insurers Act. S.C. Code Ann. Section 38-3-150. Moreover, the Director appointed Linda G. Haralson, the Department's Chief Financial Examiner, as Interim Supervisor of Foundation, vesting her with full authority to apply all applicable statutes and regulations.
9. By letter dated August 13, 2004, the Department informed Foundation that the conversion of Foundation from a captive insurance company to a traditional insurer was not effective because the conditions set in the Department's August 13, 2003 letter were not met. Additionally, the August 13, 2004, letter provided the opinion that the company is insolvent and directed that it will remain under the Administrative Supervision of the South Carolina Department of Insurance and in run-off status.
10. On September 9, 2004, Foundation provided a balance sheet as of June 30, 2004. The balance sheet reflected loss reserves of \$16,540,173.06, \$20,541,827 less than determined by financial examination, and total capital and surplus of \$1,684,249.22. Therefore, the total capital and surplus of Foundation remains negative as determined by financial examination and not in compliance with Sections 38-90-40(A) (1)(i) and 38-90-50(A)(1)(i) of the South Carolina Code.
11. Section 38-90-90(A) of the South Carolina Code in pertinent part states:  
  
The license of a captive insurance company to conduct an insurance business in this state may be suspended or revoked by the director for:  
  
(1) Insolvency or impairment of capital and surplus;  
(2) Failure to meet the requirements of Sections 38-90-40 or 38-90-50.

## CONCLUSIONS OF LAW

After a thorough review of the matter and given Foundation's current level of capital and surplus, I hereby conclude the following as a matter of law:

1. The South Carolina Department of Insurance has jurisdiction over Foundation and this matter.
2. By failing to make the capital infusion as directed by the Department, Foundation fails to meet the minimum capital and surplus requirements established in Section 38-90-40(A)(1) and 39-90-50(A)(1) of the South Carolina Code of Laws.
3. Foundation continues to be in hazardous financial condition and its continued operation is hazardous to the public.
4. Section 38-90-80(B) provides that all examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies of documents produced by or obtained by or disclosed to the director or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the director or an employee or agent of the director without the prior written consent of the company, except to the extent provided in this subsection. Inasmuch as Foundation is a single state captive insurer, without publicly traded stock, these proceedings shall be considered confidential until such other time as the director may deem disclosure appropriate according to the above cited statute.

### ORDER

IT IS THEREFORE ORDERED that Foundation remain under the Department's supervision pursuant to S.C. Code Ann. Sections 38-90-90. Pursuant to that code section and S.C. Code Ann. Section 38-3-150, I hereby appoint Steve Matthews, Manager of Regulatory Oversight of the Alternative Risk Transfer Services Division of the Department, to replace Linda G. Haralson, the Department's Chief Financial Examiner, as Interim Supervisor of Foundation, vesting him with full authority to apply all applicable statutes and regulations.

IT IS FURTHER ORDERED that, during the period of continued supervision, Foundation must not do any of the following acts *without the prior approval* of the Supervisor or his appointed representative(s) for supervision:

1. Dispose of, convey, or encumber its assets or its business in force;
2. Withdraw its bank accounts;
3. Lend its funds;
4. Invest its funds;

5. Transfer its property;
6. Incur any debt, obligation, or liability;
7. Merge or consolidate with another company;
8. Accept and/or approve any applications for insurance;
9. Approve new premiums or renew policies;
10. Enter into a new reinsurance contract or treaty;
11. Engage in any advertisement or solicitation;
12. Terminate, surrender, forfeit, convert, or lapse an insurance policy, a certificate, or a contract, except for nonpayment of premiums due;
13. Release, pay, or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on an insurance policy, certificate, or contract;
14. Make a material change in management; and
15. Increase salaries or benefits of officers or directors or the preferential payment of bonuses, dividends, or other preferential payments.

IT IS FURTHER ORDERED, effective immediately, Foundation's writings shall be subject to the approval of the Supervisor in accordance with S.C. Code Ann. Section 38-90-150.

IT IS FURTHER ORDERED the Supervisor shall fix and determine all costs incident to service rendered by him or his appointed representative(s) pursuant to this Order. This amount is to be a charge against the assets and funds of Foundation to be paid as required by S.C. Code Ann. Section 38-90-80 and 38-13-70.

IT IS FURTHER ORDERED that Foundation will remain under the administrative supervision of this Department until: 1) it demonstrates to the Department's satisfaction that the conditions which have made this action necessary have been abated; 2) it provides the Department a comprehensive reorganization plan demonstrating how the company can become more profitable and be a going concern; and 3) it infuses the capital necessary to meet and maintain the necessary capital and surplus requirements. In order for the Department to lift the administrative supervision, Foundation must satisfy the conditions outlined above and restore its capital and surplus to \$100,000 and \$150,000, respectively, and must maintain those amounts at all times thereafter.

IT IS FURTHER ORDERED that nothing contained within this Order should be construed to limit, or to deprive any person of, any private right of action under the law. Nothing contained within this Order should be construed to limit the ability of the Director to

impose further action against Foundation, including placing them into conservation, rehabilitation, liquidation, or other delinquency proceedings, during the period of administrative supervision or, as the Director believes, in his sole discretion, circumstances warrant. See S.C. Code Ann. Section 38-90-90.

This Order is to be binding upon Foundation, its agents, servants, officers, directors, employees, attorneys, and on all those persons in active concert or participation with them or who will receive actual or constructive notice of this Order by personal service or otherwise.

This Order becomes effective on the date my signature below.

  
Gwendolyn Fuller McGriff  
Deputy Director

October 5, 2004  
Columbia, South Carolina